

STATE OF MICHIGAN
COURT OF APPEALS

BARBARA WOOD,

Plaintiff-Appellant,

v

ROBERT HOLIDAY and DENISE HOLIDAY,

Defendants-Appellees.

UNPUBLISHED

April 14, 2011

No. 295031

Oakland Circuit Court

LC No. 2008-093837-NO

Before: BORRELLO, P.J., and JANSEN and FORT HOOD, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment in her favor in this premises liability action. For the reasons set forth in this opinion, we affirm.

I. FACTS AND PROCEDURAL HISTORY

Plaintiff sued defendants after she suffered an ankle injury when she slipped and fell on defendants' driveway. It was snowing at the time. The case went to trial.

After the conclusion of the proofs, the trial court read the jury instructions to the jury, and the parties agreed on the verdict form. During deliberations, the jury wrote a note to the trial judge asking four questions. The first question was: "Jury wants to know what the \$28,813 represents. Section E 50.01." The second question was: "Has this been covered by work comp?" The third question was: "Is this the minimum amount that they want to settle on?" The fourth question was: "If Jury determines that Questions 1-3 are 'yes' can all damages be 0?"

The trial court responded to the jury's questions in writing. In response to the first question, the trial court stated: "It represents the amount paid by Worker's Compensation for medical expenses." The trial court answered the second question in the affirmative. In response to the third question, the trial court stated: "I do not understand your question." Finally, the trial court stated the following in response to the fourth question: "The damages are whatever you determine them to be." Then, after plaintiff put her objections on the record, the trial court stated: "I think that the answer I gave to them is sufficient; it represents the amount paid by Workers' Comp for medical expenses. You argued that it was the lien. You gave them documents showing it was the lien. I'm not going to comment on the evidence."

The jury returned a verdict for plaintiff. The jury awarded plaintiff past noneconomic damages in the amount of \$14,400, but awarded plaintiff no damages for past medical expenses or wage losses. However, the jury did award plaintiff damages for future medical expenses and wage losses. The jury awarded plaintiff future medical damages in the amount of \$5,400, and future work loss damages in the amount of \$337,500. The jury also awarded plaintiff future noneconomic damages in the amount of \$2,600. Thus, the total damages awarded, before reduction of future damages to present value (and before any setoffs), was \$337,500. After reducing future damages to their present value, applying a set off for future social security benefits and awarding costs, the trial court entered a judgment for plaintiff in the amount of approximately \$150,000.

Plaintiff moved for judgment notwithstanding the verdict (JNOV), a new trial or additur. Plaintiff's motion was based primarily on the jury's failure to award any damages for past medical expenses or wage losses despite the facts that the parties stipulated to past medical expenses in the amount of \$28,813 and that the jury awarded damages for future medical expenses and wage losses. Plaintiff argued that the jury should have awarded her past medical expenses of \$28,813, and past wages in the amount of \$181,965 or \$229,132. Plaintiff further argued that the jury was confused regarding "the interplay between the workers compensation payments for wage loss and medical expense, the workers compensation lien, and their obligation under the law." Plaintiff also contended that the trial court erred in responding to the fourth question the jury asked about damages. According to plaintiff, the trial court should have responded that "[t]he damages are whatever you determine them to be, as long as they are supported by the evidence and conform to the jury instructions." Finally, plaintiff argued that the jury's award for future noneconomic loss damages was insufficient and not supported by the evidence.

Defendants filed a brief opposing plaintiff's motion for JNOV, new trial or additur. According to defendants, plaintiff's motion ignores the fact that there was evidence that plaintiff failed to mitigate her damages, may have exaggerated her symptoms, was motivated by secondary gain and had other medical issues that existed before her slip and fall accident. Regarding the jury's failure to award plaintiff damages for past medical expenses, defendants argued that the jury logically inferred that plaintiff's medical expenses were for medical problems that were unrelated to the injury she suffered as a result of her slip and fall accident or that the jury determined that the settlement of her workers' compensation claim adequately compensated her for past medical expenses. Regarding the jury's failure to award plaintiff damages for past wage losses, defendants argued that plaintiff settled her workers' compensation claim for far less than the past wage losses she was seeking, thus undercutting her wage loss claim, and that the jury could have determined that plaintiff's other health problems, not her injuries from the slip and fall, prevented her from working. Regarding future wage loss damages, defendants argued that the jury heard evidence of plaintiff's failure to mitigate her damages and her exaggeration of symptoms. Defendants contended that the evidence of plaintiff's noncompliance with her physical therapy regiment, combined with testimony regarding secondary gain, was compelling. Defendants argued that the jury could have concluded that plaintiff was a "big faker who was motivated by secondary gain." Regarding future noneconomic damages, defendants argued that there was ample evidence that plaintiff exaggerated her symptoms, and that, compared to her other physical complaints, her ankle injury was not very substantial, so the award of \$100 a year for pain and suffering was appropriate.

The trial court heard oral argument on the parties' motions and denied plaintiff's motion, stating: "You're lucky you won. Motion denied. That's plain and simple. I don't even have to write an opinion. Just read the transcript."¹ The trial court issued a written opinion, which stated, in relevant part:

Plaintiff's [sic] moves for JNOV on the issue of damages only, or in the alternative, for a new trial on the issue of damages only, or, for additur. The Court denied this motion on the record, because there was ample evidence at trial to support the jury's award of damages, including the physical therapist's assessment that Plaintiff "may be exaggerating her symptoms", Plaintiff's discharge from physical therapy due to non-compliance, her doctor's opinion that her fractures had healed, his acknowledgement that secondary gain, such as the receipt of Workers' Compensation, can affect a patient's subjective symptom presentation, and the fact that Plaintiff had numerous pre-accident complaints and treatment for numbness and weakness in her arms. Whether the JNOV, new trial, or additur standards are applied, Plaintiff is not entitled to the relief requested.

II. STANDARD OF REVIEW

This Court reviews de novo a trial court's ruling on a motion for JNOV. *Garg v Macomb Co Community Mental Health Servs*, 472 Mich 263, 272; 696 NW2d 646 (2005). A ruling on a motion for new trial is reviewed for an abuse of discretion. *McManamon v Redford Charter Twp*, 273 Mich App 131, 138; 730 NW2d 757 (2006). This Court also reviews a trial court's decision on a motion for additur for an abuse of discretion. *Robertson v Blue Water Oil Co*, 268 Mich App 588, 595; 708 NW2d 749 (2005). "The trial court abuses its discretion if its decision is outside the range of principled outcomes." *Morales v State Farm Mut Auto Ins Co*, 279 Mich App 720, 729; 761 NW2d 454 (2008).

When reviewing a motion for JNOV, the evidence and all reasonable inferences therefrom must be viewed in a light most favorable to the nonmoving party. *Craig v Oakwood Hosp*, 471 Mich 67, 77; 684 NW2d 296 (2004). When the evidence presented could lead reasonable jurors to disagree, the trial court may not substitute its judgment for that of the jury. *Foreman v Foreman*, 266 Mich App 132, 136; 701 NW2d 167 (2005). This Court gives deference to the trial court's decision because it has a "superior ability to view the evidence and evaluate the credibility of the witnesses." *Weiss v Hodge (After Remand)*, 223 Mich App 620, 637; 567 NW2d 468 (1997).

"When reviewing for additur, the appropriate inquiry is whether the evidence supports the jury's award." *Robertson*, 268 Mich App at 595. This Court will not overturn a verdict if there is an interpretation of the evidence that provides a logical explanation for the jury's findings. *Bean v Directions Unlimited, Inc*, 462 Mich 24, 31; 609 NW2d 567 (2000). In

¹ The trial court also denied defendants' motion for JNOV or new trial based on the open and obvious doctrine, but that portion of the trial court's ruling is not at issue on appeal.

deciding whether to grant a new trial, a circuit court must make every effort to reconcile seemingly inconsistent verdicts. *Id.* Such an effort requires a careful look, beyond the legal principles underlying the plaintiff's causes of action, at how those principles were argued and applied in the context of the specific case. *Id.*

III. ANALYSIS

A. PAST ECONOMIC DAMAGES

Plaintiff first argues that the trial court erred in denying her motion for JNOV, a new trial, or additur, regarding the jury's failure to award damages for past medical expenses and wage losses. According to plaintiff, there is no logical explanation, other than jury confusion, for the fact that the jury awarded damages for future medical expenses and wage losses, but failed to award any damages for past medical expenses and wage losses even though the parties stipulated that plaintiff had past medical expenses of \$28,813. Plaintiff contends that the jury's confusion is demonstrated by its note and questions to the trial court and that the trial court's response to the jury's questions compounded this confusion.

A jury verdict will be upheld if there is an interpretation of the evidence which provides a logical explanation for the jury's findings. *Moore v Secura Ins*, 482 Mich 507, 518; 759 NW2d 833 (2008). A verdict is not inconsistent if there is an interpretation of the evidence which can explain the findings. *Bouverette v Westinghouse Electric Corp*, 245 Mich App 391, 398; 628 NW2d 86 (2001). Every attempt must be made to harmonize the verdict; a verdict will only be set aside when it is so logically and legally inconsistent that it cannot be reconciled. *Id.* at 399-400.

In this case, there is a logical explanation for the jury's verdict. The parties stipulated "that there is a Workers Compensation Lien for \$28,812.57 for medical care and \$181,065.92 for wage loss" Based on the evidence at trial, the jury could conclude that the \$28,813 was for past medical expenses and that plaintiff received past wage loss benefits in the amount of \$593 per week.² Therefore, the jury could have logically concluded that plaintiff had already received compensation for past medical expenses and wage losses and that it only needed to award future damages for medical expenses and wage loss benefits. Considering that plaintiff had already been compensated for past medical expenses and wage losses, it was logical for the jury to only award damages for future medical expenses and wage losses. In addition, the parties stipulated that reference could be made at trial to plaintiff's "resolution of her workers Compensation Claim, including the ending of workers compensation benefits upon settlement of her workers compensation claim" The settlement agreement for plaintiff's Workers' Compensation claim was admitted into evidence and shows that the claim was settled for \$140,000 and that in exchange for the \$140,000, plaintiff agreed to waive "any and all liability for *past*, present or future weekly compensation, medical care and expenses" (Emphasis added.) In light of

² Workers' Compensation eventually stopped paying such amounts, and plaintiff entered into a Workers' Compensation settlement in the amount of \$140,000 on September 15, 2008.

this language, it would have been logical for the jury to infer that the settlement of plaintiff's Workers' Compensation claim adequately compensated her for past medical expenses and wage losses and therefore not to award such damages. "No legal principle requires the jury to award one item of damages merely because it has awarded another item." *Kelly v Builders Square, Inc.*, 465 Mich 29, 39; 632 NW2d 912 (2001).

Moreover, the fact that there was a Workers' Compensation lien on any recovery had by plaintiff for medical expenses and wage losses does not render the jury's verdict illogical. Plaintiff incorrectly asserts that the parties stipulated that plaintiff's past medical damages were \$28,813. In fact, the stipulation does not specify that plaintiff's receipt of Workers' Compensation payments was for past medical expenses, but simply states "that there is a Workers Compensation Lien for \$28,812.57 for medical care" In any event, to the extent that the existence of the Workers' Compensation lien may conflict with evidence that plaintiff settled her Workers' Compensation claim, which encompasses past medical expenses and wage losses, it was the jury's function to resolve this conflict. See *Anton v State Farm Mut Auto Ins Co*, 238 Mich App 673, 684-686; 607 NW2d 123 (1999). Moreover, the stipulation regarding the existence of the lien does not mandate the award of past economic damages for medical expenses and wage losses. When parties stipulate to facts, the stipulated facts are binding on the court. *People v Metamora Water Service, Inc.*, 276 Mich App 376, 385; 741 NW2d 61 (2007). However, plaintiff has cited no authority, and we are aware of none, that would obligate the jury in this case to award damages simply to satisfy a lien to which the parties stipulated. We decline to inject this Court "into the role of trier of fact, thus imposing liability on defendant[s] contrary to a verdict rendered by a jury" *Bean*, 462 Mich at 35.

Plaintiff cites *Robertson* in support of her argument that she is entitled to a new trial or additur. In *Robertson*, the trial court ruled as a matter of law that the plaintiff's reasonable and necessary medical expenses were about \$120,000, so the parties did not present evidence to the jury regarding medical expenses. *Robertson*, 268 Mich App at 595. The plaintiff did present evidence of lost wages and benefits, however, and the jury awarded \$86,000 for total past economic loss, a sum that closely resembled the amount the plaintiff claimed to have lost in wages and benefits. *Id.* at 595-596. This Court vacated the portion of the jury award regarding economic damages, concluding that the jury was confused without explaining or specifying exactly how the jury was confused: "We are unable to deduce any logical reason for this other than jury confusion, because this sum closely resembles the amount plaintiff claimed to have lost in wages and benefits, implying that the jury ignored the established sum of medical expenses." *Id.* at 596.

We find that *Robertson* is distinguishable from the instant case. In this case, the alleged conflict in the jury's verdict stems from the trial court's award of damages for future medical expenses and wage losses, but not for past medical expenses and wage losses. In contrast, the verdict in *Robertson* only involved damages for past economic losses. Moreover, as noted above, the panel in *Robertson* did not detail the nature of the jury's confusion in that case, but rather summarily concluded, without explanation, that "jury confusion" explained the jury's verdict. In the present case, there is a logical explanation for the jury's award of future, but not past, economic damages; thus, we conclude that, unlike the jury in *Robertson*, the jury in the present case was not confused. We are not persuaded by plaintiff's reliance on *Robertson*.

We also reject plaintiff's argument that the trial court's response to the jury's fourth question was erroneous. The trial court responded as follows to the question: "The damages are whatever you determine them to be." Plaintiff contends that the trial court should have responded as follows: "The damages can be whatever you determine them to be, *as long as those amounts are based on the evidence and my instructions.*" According to plaintiff, the damages could not be zero because the trial court instructed the jury that past medical expenses were \$28,813. For the reasons stated above, we conclude that the parties' stipulation regarding the existence of the Workers' Compensation lien did not translate into an obligation for the jury to award damages for past medical expenses and wage losses. In light of evidence that plaintiff settled her Workers' Compensation claim and that the settlement agreement specifically encompassed past medical expenses and wage losses, the jury could have logically concluded that plaintiff had already been compensated for past medical expenses and wage losses. We are not persuaded by plaintiff's argument that the trial court's response to the jury's question regarding damages was erroneous.

In sum, for all the reasons articulated above, we hold that the trial court did not err in denying plaintiff's motion for JNOV, new trial or additur. Viewing the evidence and all reasonable inferences in a light most favorable to defendants, reasonable jurors could have reached different conclusions regarding whether to award plaintiff past economic damages for medical expenses and wage losses. Therefore, the trial court did not err in denying plaintiff's motion for JNOV. The trial court further did not abuse its discretion in denying plaintiff's motion for new trial or additur because there is a logical explanation for the jury's award of no past economic damages. This Court's role is not to substitute its own reading of the evidence for that of the jury. *Foreman*, 266 Mich App at 136. We may not inject ourselves into the role of a trier of fact. *Bean*, 462 Mich at 35.

B. FUTURE WORK LOSS DAMAGES

Plaintiff next argues that the trial court erred in denying her motion for JNOV, a new trial, or additur based on the jury's award of future work loss damages.

Plaintiff does not provide any authority for the assertion that, if a jury awards future employment damages, it must accept the plaintiff's proposed figures. The jury is the sole trier of the facts. There was evidence upon which the jury could conclude that plaintiff had exaggerated her work loss damages. The jury also had evidence upon which the jury could have concluded that some of plaintiff's employment difficulties were caused by her problems with her right arm and with her cognition—problems that were unrelated to her slip and fall accident. The jury is the judge of credibility, *Ambs v Kalamazoo Co Rd Comm*, 255 Mich App 637, 652; 662 NW2d 424 (2003), and it could have determined that plaintiff's testimony regarding her efforts to mitigate her employment damages was partly, but not completely, credible. The jury could have determined that plaintiff's ankle injury only caused a certain portion of plaintiff's employment damages. This Court's role is not to inject itself into the role of trier of fact, to retry the issue of damages. *Bean*, 462 Mich at 35. Because there is a logical explanation for the jury's future employment damage figures, the trial court did not err in denying JNOV or abuse its discretion in denying a new trial and additur.

C. FUTURE NONECONOMIC DAMAGES

Finally, plaintiff argues that the trial court erred in denying her request for a new trial or additur on the issue of future noneconomic damages.

We hold that the trial court did not abuse its discretion in denying a new trial or additur on future noneconomic damages. There was evidence that plaintiff may have exaggerated her symptoms, failed to mitigate her damages and was motivated by secondary gain. The jury is the judge of credibility. *Amb's*, 255 Mich App at 652. In light of the aforementioned evidence, the jury may have determined that plaintiff's testimony that she felt pain and suffering was not completely credible. Moreover, given that there was evidence of other physical problems that may have caused plaintiff pain and suffering, the jury could have determined that plaintiff's ankle injury only caused a certain portion of plaintiff's pain and suffering damages.

Affirmed.

/s/ Stephen L. Borrello
/s/ Kathleen Jansen
/s/ Karen M. Fort Hood